



# **NATIONAL INDIAN GAMING ASSOCIATION**

Rebuilding Communities Through Indian Self-Reliance

## **TESTIMONY OF ERNEST STEVENS, JR., CHAIRMAN NATIONAL INDIAN GAMING ASSOCIATION**

**SENATE COMMITTEE ON INDIAN AFFAIRS  
THE FUTURE OF INTERNET GAMING: WHAT'S AT STAKE FOR TRIBES?  
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### ***Introduction***

Good morning Chairman Akaka, Vice Chairman Barrasso, and members of the Committee. My name is Ernie Stevens, Jr., I am a member of the Oneida Nation of Wisconsin and it is my honor to serve as Chairman of the National Indian Gaming Association (NIGA). NIGA is an intertribal association of 184 federally recognized Indian Tribes united behind the mission of protecting and preserving tribal sovereignty and the ability of Tribes to attain economic self-sufficiency through gaming and other economic endeavors. I want to thank you for this opportunity to provide our views on Internet gaming in the United States, and for this Committee's oversight on the issue.

### ***Indian Tribes in the U.S. Federal System of Government***

While I know that this Committee is well aware of the conflicted history of the treatment of Indian tribes in the United States, it's necessary to briefly restate some of that history in order to place our views on Internet gaming in proper context.

The U.S. Constitution expressly recognizes Indian tribes as governments. Through treaties with the United States, tribal governments ceded hundreds of millions of acres of their homelands to help build this great Nation. In return, the U.S. promised to preserve remaining tribal lands and tribal sovereignty, and provide for the health, education and general welfare of Indian people. Sadly, many of these treaty promises have been ignored and many more broken.

Generations of failed federal policies ensued, which caused the death of thousands of our ancestors, stole additional millions of acres of tribal land holdings, suppressed our language and culture, and destroyed tribal economies.

Refusing to wait for the federal government to meet its obligations, tribes took matters into their own hands in the 1960s and 70s when they began using gaming as a means to generate revenue to meet tribal community needs. That's when Presidents Johnson and Nixon adopted the policy of Indian Self-Determination, which promoted the sovereign rights of tribal governments, tribal culture, and tribal economic self-sufficiency. Indian gaming is one of the most successful examples of true Indian Self-Determination.

In 1988, after more than a decade of legal challenges to tribal government gaming by states and commercial gaming interests, Congress stepped in to establish a federal system to regulate and foster Indian gaming through enactment of the Indian Gaming Regulatory Act (IGRA). IGRA acknowledges that Indian tribes, as governments, have the right to both regulate and manage gaming operations. IGRA also mandates that tribal gaming revenues will be used for express tribal government purposes. It also provides that tribal gaming revenues are not subject to taxation. Finally, the Act established a comprehensive regulatory system that involves three levels of government regulation: tribal, federal, and state.

Twenty-three years later, more than 220 Indian tribes have made IGRA work and began to rebuild their once forgotten communities. Indian gaming revenues are working to improve tribal education, health and elder care, rebuild tribal infrastructure and much more. For many tribes, Indian gaming is about jobs. In 2010, Indian gaming created more than 600,000 direct and indirect American jobs. Without question, Indian gaming is putting people to work.

Tribes realize that these gains would not be possible without strong regulation. The Indian gaming regulatory system employs more than 3,400 regulators and state of the art technology to protect tribal revenues. In 2010 alone, tribes spent more than \$375 million on regulation. This system is costly, it's comprehensive, and our record and experience shows that it's working.

Indian gaming is not a cure all. However, it has proven to be the best tool for economic development for a great number of Indian tribes. Because of Indian gaming, tribal governments are stronger, our people are healthier, and an entire generation of Indian youth has hope for a better future.

As a result of these gains, all tribes are concerned when Congress considers changing the playing field with regard to gambling. The federal legalization of Internet gaming raises such concerns.

## ***NIGA Views on Federal Legalization of Internet Gambling***

Congress has considered various forms of Internet gaming legislation for the past 15 years. The early discussion focused on a prohibition of Internet gaming. This early debate culminated in the enactment of the Unlawful Internet Gambling Enforcement Act (UIGEA). UIGEA was attached as a midnight rider to the Security and Accountability for Every Port Act, *P.L. 109-347*.<sup>1</sup>

Since enactment of UIGEA, several members of Congress have sought to reverse course and legalize Internet gaming in the United States. Despite our efforts, tribal governments have not been invited to the table during these negotiations or during development of legislation that has been drafted or introduced.

As you have heard today, tribal governments hold various positions on the legalization of Internet gaming. However, despite these disparate views, tribal governments have built a consensus position on Internet gaming. In 2010, tribal leaders met on more than a dozen occasions to discuss the pros and cons of Internet gambling legislation. During these meetings, we heard from experts in the Indian gaming and Internet gaming industry, as well as economists and others. From these meetings, tribal leaders came together to form a unified voice in support of general principles regarding federal legislation that would legalize Internet gaming in the United States.

Our Resolution and accompanying principles acknowledge that Indian country has diverse economies that could be adversely impacted by the federal legalization of Internet gaming. The Resolution resolves that, at a minimum, federal Internet gaming legislation must incorporate the following fundamental principles:

- **Indian tribes are sovereign governments with a right to operate, regulate, tax, and license Internet gaming, and those rights must not be subordinated to any non-federal authority**

All federally recognized Indian tribes must be eligible to both operate and regulate Internet gaming. IGRA authorizes tribes to both operate and regulate brick and mortar casinos. The current regulatory / operation system in place for Indian gaming is working. For more than two decades, tribes have worked with the National Indian Gaming Commission (NIGC) to ensure the integrity of tribal games and protect tribal gaming revenue. A similar system is in place for state governments to both operate and regulate lottery systems. However, state lotteries do not have the added oversight of a federal regulatory agency.

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<sup>1</sup> NIGA worked with the Committee's of jurisdiction to ensure that UIGEA protected existing rights under IGRA and in existing tribal-state compacts. As a result, UIGEA exempts intertribal gaming and other forms of gaming authorized under IGRA from the definition of "unlawful Internet gaming."

In addition, if a federal regulatory system is developed and mandated, tribal governments ask that the NIGC be vested with authority to regulate tribal Internet gaming. IGRA established the NIGC as the principal federal regulatory body to oversee Indian gaming. Today, the NIGC is the only federal agency with experience in regulating any form of gaming in the United States. This provision should not supersede tribal governments' rights to regulate Internet gaming.

- **Internet gaming authorized by Indian tribes must be available to customers in any locale where Internet gaming is not criminally prohibited**

Internet gaming transcends borders. Thus, Internet gaming legislation must acknowledge that customers may access tribal government operated and regulated Internet gaming sites as long as Internet gaming is not criminally prohibited where the eligible customer is located. Such acknowledgment would be consistent with current law and would recognize significant experience on the part of tribes in using technology to conduct gaming across borders.

IGRA specifically acknowledges Congress' intent that tribal gaming operations benefit from growing technology, with the intent of authorizing tribes to provide games to a broader audience. For more than two decades, tribes have conducted gaming beyond local tribal borders and across state borders by linking class II and class III machines to broaden participation in tribally regulated games. New federal legislation should embrace the expertise that tribes have built through IGRA.

Past statements of the U.S. Department of Justice support this position. "[T]o the extent that any legislation would seek to exempt from its prohibition bets and wagers that are authorized by both the state or country in which the bettor *and* the recipient reside ... Indian Tribes should be treated as every other sovereign for the purpose of authorizing gaming activity on their lands." *Statement of Kevin V. DiGregory, Deputy Assistant Attorney General, Criminal Division*, <http://www.justice.gov/criminal/cybercrime/kvd0698.htm>.

- **Consistent with long-held federal law and policy, tribal Internet gaming revenues must not be subject to tax**

It's a fundamental principle of law that governments do not tax the essential revenues of other governments. The U.S. Constitution recognizes that Indian tribes are governments. Thus, Internet gaming legislation must acknowledge that tribal government Internet gaming revenues are not subject to taxation. Tribes are willing to maintain the same limits on the use of tribal Internet gaming revenue as are included in IGRA for the use of Indian gaming revenue. IGRA requires that tribes spend gaming revenues on five listed public purposes: tribal government operations, general welfare of the tribe and its members, economic development, donations to charitable organizations, and operations of nearby

local governments. 25 U.S.C. 2710(b)(2)(B). This provision essentially assesses a 100% tribal tax on Indian gaming revenue. As a result tribal revenues are 100% dedicated to addressing the severe unmet needs of tribal communities. There is simply no room for federal or state taxation.

- **Existing tribal government rights under Tribal-State Compacts and IGRA must be respected**

Tribal governments have invested significant resources in their operations based on the rights acknowledge under IGRA and in carefully negotiated tribal-state class III gaming compacts. These agreements must not be violated.

In addition, Internet gaming legislation must permit Indian tribes to operate Internet gaming without renegotiating existing tribal-state compacts. By legalizing Internet gaming, Congress will be establishing new law for a new industry. As noted above, Internet gaming transcends borders. Thus, tribes should be permitted to offer Internet gaming to consumers anywhere it is deemed legal by the government of jurisdiction. This position makes added sense in the case of Internet poker. Poker is considered a non-banked card game that would be considered class II gaming under IGRA in many cases, and thus, not subject to compacting requirements. Other arguments are being made that poker is a game of skill, not chance, and again likely outside the scope of compacting requirements.

- **The legislation must not open up IGRA for amendments**

For hundreds of tribal governments there is simply too much at stake to open the Indian Gaming Regulatory Act up to amendments on the floor of either the House or Senate. Tribes have consistently opposed subjecting IGRA to amendments for the past 23 years. Many federal laws outside of Title 25 acknowledge the governmental status of Indian tribes. Thus, instead of amending IGRA, tribal governments ask that the principles included in the NIGA Resolution be followed as part of new legislation to authorize Internet gaming in the United States.

- **Federal legalization of Internet gaming must provide positive economic benefits for Indian country**

This principle requires the United States to acknowledge its Constitutional, treaty and trust obligations to Indian tribes as well as the significant stake that tribal governments have in the existing gaming industry. To meet this principle, federal legislation legalizing Internet gaming must set-aside and dedicate funding to meet the significant unmet needs of tribal communities.

As noted above, tribal governments ceded and had taken hundreds of millions of acres of tribal homelands to help build this Nation. In return, the U.S. promised to provide for the education, health, safety and welfare of Indian people. These solemn promises have not been kept. Too many of our people continue to live

with disease and poverty. Indian health care is substandard, violent crime is multiple times the national average, and unemployment on Indian reservations nationwide averages 50%. Tribal youth are among the most disadvantaged population in America. Our youth suffer the highest dropout rates and lowest education achievement levels in the Nation. The suicide rate for Native teens is 3.5 times the national average. Many tribal governments are using revenue generated from Indian gaming to address these severe unmet needs.

Economic studies show that legalized Internet gaming in the United States will adversely impact brick and mortar casinos, which in turn will impact the ability of tribes to meet their communities' needs. As a result, tribal governments ask that legislation legalizing Internet gaming in the U.S. be accompanied by a program set-aside to meet the government's treaty and trust obligations to Indian country.

### ***Current Internet Legalization Proposals Before Congress***

As noted above, Internet gaming bills that have been introduced in the House of Representatives in the 112<sup>th</sup> Congress (H.R. 1174 and H.R. 2366) as well as recent drafts developed in the Senate violate many of the principles discussed above. NIGA strongly opposes these proposals unless they are amended to adhere to the principles detailed in this testimony. The discussion below details some of the specific concerns that we have with the current proposals to legalize Internet gaming.

### **Commercial v. Government Internet Gaming**

Current Internet gaming bills and drafts violate the first principle that all federally recognized Indian tribes should be eligible to both operate and regulate Internet gaming if such activity is legalized in the United States.

Current proposals envision only commercially operated Internet gaming, and ignore the ability of Indian tribes to operate Internet gaming sites as governmental entities. The bills would prohibit tribal governments from regulating Internet poker if the tribe also has a significant ownership interest in an Internet poker licensee – or is itself an operator.

Just as state governments have regulated state lottery systems for decades, tribal governments for more than two decades under IGRA, and even prior to IGRA, have established independent regulatory agencies that provide the day-to-day oversight of the games offered at tribal operations and of Indian gaming revenues. No one has a greater vested interest in ensuring the credibility of tribal games or protecting Indian gaming revenues than tribal governments. In 2010 alone, tribes spent \$375 million on regulation. Our regulatory personnel include top law enforcement officials from tribal, federal, and state agencies. Tribes also employ state of the art surveillance and related technology, as well as the personnel educated and trained to manage this equipment. The expertise that

our regulators have developed should be embraced in legislation to legalize Internet gaming in the United States.

Another significant concern with current bills is that they would skew the playing field to enable a few select most-favored regulators and operators to enter the field prior to other entities. Congress should not be in the business of picking and choosing winners and losers if or when it decides to establish a new industry such as Internet gaming. Carving out exemptions for certain states or certain gaming operators is unacceptable.

#### *NIGC as Regulator of Tribal Internet Gaming*

The current bills and drafts violate the principle that if a federal regulatory system is established that tribal governments continue to work with the National Indian Gaming Commission (NIGC). Current bills would subject tribal governments that are eligible to operate Internet gaming to the regulatory authority of either the Commerce or Treasury Departments. They also envision tribes working with a newly established Office of Internet Poker. These agencies, while striving to better understand tribal governments and the federal government's trust and treaty obligations towards tribes in recent years, do not have the longstanding relationship or understanding held between tribes and the NIGC and the Department of the Interior. The Interior Department has long been viewed as the point agency responsible for upholding the federal government's obligations to tribal governments. Again, the NIGC is the only federal agency with experience in regulating any form of gaming.

#### *Tribal Government Revenues and Taxation*

Current Internet gaming bills and recent drafts violate the principle that tribal Internet gaming revenues not be subject to taxation. Current bills would either place an across the board tax on Internet gaming revenues or place a flat licensing fee on tribal governments based on a percentage of Internet gaming revenues. Again, current bills envision only commercially operated Internet gaming, and do not acknowledge Indian tribes as governments. These provisions must be amended to acknowledge tribal Internet gaming revenue as that will be 100% dedicated to rebuilding tribal communities. Such governmental revenue should not be subject to taxation by another government.

#### *Tribal Rights Under IGRA and in Existing Gaming Compacts*

Current Internet bills also contain provisions that would violate the principles to preserve existing tribal rights under IGRA and in existing tribal-state gaming compacts. Some of these bills contain provisions under the heading "No Impact on the Indian Gaming Regulatory Act." The title of the provision is misleading, as it would authorize the violation of existing tribal-state compacts provisions, such as exclusivity agreements. Voiding existing contract rights, such as exclusivity

agreements, without the consent of affected states and tribes may violate the Fifth Amendment Due Process and Takings Clauses. The provision would also permit violation of IGRA's requirements for tribal eligibility to conduct gaming. For example, a state such as Utah, which criminally prohibits all forms of gambling, could authorize Internet gaming, but under this provision, such authorization would not affect the right of tribes within the state to conduct gaming under IGRA. These provisions should be amended to affirmatively recognize the full force and effect of existing tribal-state compact agreements as well as safeguard existing tribal government rights under IGRA.

### ***Internet Gambling and the Deficit Reduction Plan***

Proponents of legalizing Internet gaming have asked the Joint Select Committee on Deficit Reduction to include Internet gaming as part of the national strategy to cut the federal deficit. We strongly oppose inclusion of Internet gaming legalization as part of the national plan to reduce the federal deficit.

Legalization of Internet gaming is a controversial policy issue that must be carefully examined. As noted above, current House proposals to legalize Internet gaming have not been vetted by their respective committees and are not ready to be passed in the House of Representatives. In the Senate, no legislation has even been introduced in the 112<sup>th</sup> Congress.

However, if any attempts are made to insert Internet gaming legislation as part of the Deficit Reduction Plan, we urge this Committee to work with the members of the Joint Select Committee on Deficit Reduction to include the principles discussed in this testimony before permitting such a proposal to move forward.

### ***Conclusion***

For four decades, Indian gaming has proven to be the most effective tool for many tribes to begin to address generations of federal policies that sought to destroy tribal land holdings, culture, and economies. Many tribal governments are justly concerned that legalizing Internet gaming in the United States will threaten the American jobs and precious tribal government revenues established through Indian gaming.

To address these concerns, tribal governments ask that if federal Internet gaming legalization moves forward, that the legislation: (1) acknowledge that all federally recognized tribes are eligible, as governments not subject to taxation, to participate in the new industry as both operators and regulators; (2) that tribal Internet operations be open to customers wherever legal; (3) that the legislation fully protect tribal government rights under IGRA and existing tribal-state compacts; (4) that IGRA not be opened to amendment; and (5) that the legislation set-aside positive economic benefits to address the significant unmet needs of Indian country.



I again thank you for this opportunity to testify today. I look forward to working with the Committee on this important issue, and welcome any questions.